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BRIEF FOR RESPONDENTS IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1594

NORTH WASHINGTON NEIGHBORS, INC., et al.,
Petitioners,

v.

DISTRICT OF COLUMBIA,
A Municipal Corporation, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTION PRESENTED

Whether the District of Columbia Court of Appeals exceeded the scope of review of trial court findings of fact permitted by D. C. Code, 1973, § 17-305(a).

STATEMENT

This is a class action on behalf of property owners in the District of Columbia to compel the District Government

to assume the financial burden of repairs to water pipes in public space (generally below streets) which connect the District's watermain pipes with the property owners' private plumbing systems. Property owners had carried this burden since at least 1896. The trial court ruled, on several alternative grounds, that, despite this lengthy history, District officials had no legal authority to require that property owners make these repairs (Pet. App. at 43-52). It ordered the District to assume the entire financial burden prospectively, and to reimburse property owners who had paid for such repairs from the date of its decision (December 10, 1975) back to three years prior to the filing of this case (August 21, 1971). (Pet. App. at 53-57.)

The District of Columbia Court of Appeals reversed in all respects. It held that provisions of the District of Columbia Code and various provisions of the local Police Regulations and Plumbing Code and of the D. C. Department of Sanitary Engineering regulations permit imposition of these costs on property owners (Pet. App. at 4-6). It also held that the District is not liable on a tort theory or on the equal protection grounds advanced by petitioners (Pet. App. at 3, 8-11). Petitioners seek a writ of certiorari on the ground that reversal was effected only because the Court of Appeals exceeded the scope of review of trial court findings of fact permitted by D. C. Code, 1973, § 17-305(a).

The District of Columbia City Council, on March 29, 1977, enacted new legislation which became effective after the decision of the District of Columbia Court of Appeals and is retroactive to March 29, 1974. D. C. Law 1-98, The Water and Sewer Repairs and Compensation Act of 1976, 23 D. C. Reg. 4933-4938 (App. A). The new Act gives the petitioners all the relief they requested for the period it covers. The only further relief now possible is additional retroactive reimbursement to property owners who made repairs during the period from August 21, 1971, to March 29, 1974.

REASONS FOR DENYING THE WRIT

Petitioners have failed to advance a ground for review falling within the standards and considerations governing review on writ of certiorari as prescribed by Rule 19 of this Court. They assert that the District of Columbia Court of Appeals exceeded the scope of review of trial court findings permitted by a local statute, D. C. Code, 1973, § 17-305(a). The contention clearly lacks merit. But this case would not have sufficient importance to warrant review even if there was an arguable basis for petitioners' claim of a violation of the code provision.

This Court long ago adopted a policy of deferring to the courts of the District of Columbia on local issues, except in cases of egregious error. That policy was recently reaffirmed in *Pernell* v. *Southall Realty*, 416 U. S. 363, 368-369 (1974), where the Court said:

> This new structure [the recent congressional reorganization of the court system of the District of Columbia] plainly contemplates that the decisions of the District of Columbia Court of Appeals on matters of local law—both common law and statutory law—will be treated by this Court in a manner similar to the way in which we treat decisions of the highest court of a State on questions of state law. • • • [T]he new court structure certainly lends additional support to our long standing practice of not overruling the courts of the District on local law matters "save in exceptional situations where egregious error has been committed." • • • (Footnotes and citations omitted.)

And see, *Griffin* v. *United States*, 336 U. S. 704 (1949); *Fisher* v. *United States*, 328 U. S. 463 (1946); *United Surety Co.* v. *American Fruit Product Co.*, 238 U. S. 140

(1915); *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285 (1935); *American Security & Trust Co.* v. *District of Columbia*, 224 U. S. 491 (1912). There are no exceptional circumstances and no allegation of egregious error in this case.

The case is of purely local concern in all its respects. It deals with whether the District of Columbia Government or District property owners will pay for broken pipes under public streets that are part of the property owners' water systems. In reaching its decision, the Court of Appeals construed provisions of the District of Columbia Code, local Police Regulations, the local Plumbing Code, and regulations of the District of Columbia Department of Sanitary Engineering. And D. C. Code, 1973, § 17-305(a), the provision petitioners exclusively rely upon in seeking certiorari, is also obviously applicable only in the District of Columbia.

Consistent with the local nature of this case, the District of Columbia City Council recently reacted to the problems the case poses. New legislation, which became effective following the decision of the Court of Appeals and its denial of rehearing and *en banc* reconsideration, places the burden of repair of water pipes in public space upon the District Government. The new law, effective March 29, 1977, and retroactive for three years to March 29, 1974, provides all relief requested by petitioners to the latter date. See D. C. Law 1-98, Water and Sewer Repairs and Compensation Act of 1976, 23 D. C. Reg. 4933-4938 (App. A).

The new legislation is retroactive to nearly five months prior to the date this case was filed. Petitioners seek additional retroactive relief to August 21, 1971 (three years prior to filing this case). Given the substantial retroactivity granted in the new legislation and the fact that the previous legislative and regulatory scheme had been in effect since 1896, strong equitable grounds exist for denying any further retroactive relief even if the Court of Appeals was wrong in its decision. *Lemon* v. *Kurtzman*, 411 U. S.

192, 199-200 (1973); *District of Columbia* v. *Keyes*, D. C. App., 362 A.2d 729, 735-737 (1976), cert. denied, —— U. S. —— (No. 76-1169, decided April 18, 1977). This case, therefore, does not have sufficient continuing significance to warrant review. *Rice* v. *Sioux City Cemetery*, 349 U. S. 70 (1955). See also *Cook* v. *Hudson*, 97 S. Ct. 543 (1976); *Morris* v. *Weinberger*, 410 U. S. 422 (1973); *Murel* v. *Baltimore City Criminal Court*, 407 U. S. 355 (1972).

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for writ of certiorari should be denied.

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APPENDIX

D. C. LAW 1-98

To provide that the District of Columbia shall be responsible for the repair and maintenance of water service pipes and building sewers connecting lots with water mains and the public sewer and shall compensate property owners for such prior repairs under certain circumstances.

Be it enacted by the Council of the District of Columbia, That this act may be cited as the "Water and Sewer Repair and Compensation Act of 1976", the purpose of which is to provide that the District of Columbia shall be responsible for the repair and maintenance of water service pipes and building sewers connecting lots with water mains and the public sewer and shall compensate property owners for such prior repairs under certain circumstances.

Sec. 2. The Act entitled "An Act to provide for the drainage of lots in the District of Columbia, approved May 19, 1896, (D.C. Code, secs. 6-401, *et. seq.*) is amended by adding the following new section:

"5(a) For the purpose of this section certain words and terms are defined as follows:

"Parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to such property line, as such property line and sidewalk are shown on the records of the Surveyor of the District of Columbia.

"Property" means real property.

"Property line" means the line beyond which a private property owner has no legal or vested property rights in any fronting or abutting public space or street; the line of

demarcation between privately owned property and any public space or street as may be shown on the records of the Surveyor of the District of Columbia.

"Public Space" means all the publicly owned property between lines on a street, as such property lines are shown on the records of the Surveyor of the District of Columbia, and includes any roadway, tree space, sidewalk, or parking between such property lines.

"Street" means a public highway as shown on the records of the Surveyor of the District of Columbia whether designated as a street, alley, avenue, freeway, road, drive, lane, place, boulevard, parkway, circle, or by some other term.

"(b) The Mayor of the District of Columbia is authorized to repair and maintain and, where necessary, to renew all water service pipes and building sewers from the water main or the public sewer to the property line of each lot in the District of Columbia required to be so connected by the first section of this Act at the costs of such owner or owners and to perform all such repairs, as are necessary, to maintain or improve any roadway, alley, minor street, highway or other public space above such repaired or renewed water service pipes or building sewers. The Mayor, where he deems such action necessary, may also perform maintenance or repair work on private property, in which case, the cost, including overhead expense, shall be paid by the property owner. The cost of any repair or maintenance work on water service pipes or building sewers beyond the property line away from the house or structure, made necessary by the negligence or through the action of a property owner or tenant as reasonably determined by the Mayor, shall be charged to the property owner.

"(c) The Mayor is further authorized and directed to compensate property owners for any and all expenses incurred at the direction of the District of Columbia for the direct repair of water service pipes or building sewers within the past three (3) years from the enactment of this section, provided that such repairs at the time of their performance have met the requirements of subsection (b) of this section. Compensation shall be in the form of payment or the removal of a lien or assessment against such property by the District of Columbia only to owners who establish under the requirements of subsection (e) of this section proof of actual payment of repairs under a permit issued by the District of Columbia. All rights to compensation under the terms of this subsection shall terminate two (2) years from the enactment of this section.

"(d) All prior year compensation payments authorized by subsection (c) of this section and all work required to be done in the repair, maintenance or renewal of water service pipes and building sewers as authorized under subsection (b) of this section including surface repair work not within the right-of-way of streets or alleys shall be paid for from water and sewer rate revenue appropriated to the District of Columbia, except that all surface repair work to be done upon public space within the roadway, tree space or actual sidewalk right-of-way of any street shall be paid for out of highway revenues appropriated to the District of Columbia.

"(e) Before compensation is granted, the Mayor shall determine whether the repair, made under a permit issued by the District of Columbia, would have been authorized under subsection (b) of this section, noting such other pertinent findings of fact as he deems necessary. If the Mayor determines that the repair work would have been eligible under subsection (b) of this section had it been in effect at the time of the repair, he shall compensate any person, who was the property owner at the time the repairs were made, for the cost of such repairs, provided such owner can establish proof of payment for the cost of the repairs to the reasonable satisfaction of the Mayor up to the full value thereof for each separate occurrence.

"(f) Any person who by means of false statement, or impersonation, or by other fraudulent device obtains or

attempts to obtain or any person who knowingly aids or abets such person in obtaining or attempting to obtain (1) any award or payment of compensation under the provisions of this section to which he is not entitled, (2) a larger amount or greater relief in compensation than that to which he is entitled, shall be guilty of a misdemeanor and, shall be sentenced to pay a fine of not more than $500.00 or imprisoned not to exceed one year, or both. Prosecutions under the provisions of this subsection shall be in the name of the District of Columbia by the Office of the Corporation Counsel.

"(g) The Mayor is further authorized to prescribe rules and regulations governing the maintenance and repair of such water service pipes and building sewers by the District of Columbia and the compensation of property owners by the District of Columbia for eligible prior year repairs of water service pipes, building sewers and the roadway above such water service pipes and sewers.

"(h) If any section, subsection, or provision of this act is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections, subsections, or provisions of this act."

Sec. 3. To the extent that the provisions of this act are inconsistent with the provisions of any other Act or regulation the provisions of this act shall be deemed to supersede the provisions of such laws.

Sec. 4. This act shall take effect at the end of the 30 day period provided for Congressional review of acts of the Council in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.